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Forty-eighth session

SUMMARY RECORD OF THE 1131st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 27 February 1996, at 3 p.m.

Chairman: Mr. BANTON
later: Mr. FERRERO COSTA

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6)

Initial report of Zimbabwe (CERD/C/217/Add.1 and HRI/CORE/1/Add.55)

1. At the invitation of the Chairman, Mr. Chinamasa, Mr. Jokonya, Mr. Chifamba, Mr. Maunganidze and Ms. Ndaona (Zimbabwe) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Zimbabwe and drew attention to an addendum to the initial report which had been circulated to members.

3. Mr. CHINAMASA (Zimbabwe) said that Zimbabwe had acceded to the Convention on 13 May 1991. The delay in submitting the initial report (CERD/C/217/Add.1) had been due to the lack of implementing machinery. The report had been prepared by the Interministerial Committee on Human Rights and Humanitarian Law, established in February 1993, whose functions included examining international human rights instruments and recommending accession thereto, informing government ministries of Zimbabwe's obligations under instruments to which it was a party, monitoring violations of their provisions, initiating and coordinating measures to ensure compliance, and preparing reports for submission to the relevant bodies set up under those instruments. He was confident that Zimbabwe would henceforth comply with its reporting obligations in a timely manner and apologized for any shortcomings in the report. He was willing to answer any questions about events prior to May 1991.

4. There were a number of statistical errors in paragraph 5 of the core document (HRI/CORE/1/Add.55) concerning ethnic characteristics. The largest ethnic group, the Shona, totalled 85 per cent of the population. The Ndebele accounted for 13 per cent and the Sotho, Tonga and Venda for 1.5 per cent. Persons of European and Asian origin constituted 0.5 per cent of the total. Under paragraph 6, the gross domestic product (1992) should read Z$ 25,790 million.

5. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) welcomed the initial report of Zimbabwe, which had been drafted in accordance with the Committee's guidelines. Zimbabwe was a multiracial, multicultural and multilingual country, although the Shona constituted by far the largest ethnic group. Apart from references in the report to specific laws to prohibit racial discrimination, there was little indication of the manner in which article 1 of the Convention was being implemented, and further information about anti-discriminatory legislation was required. Zimbabwe was, however, to be commended for its policy of non-discrimination on the basis of Section 23 of the Constitution and particularly for the measures taken in various fields with the aim of abolishing discriminatory practices predating independence. Although racial discrimination had reportedly been eliminated from the education system, it might be asked whether the establishment of a quota system in schools - 60 per cent African and 40 per cent non-African - did not constitute reverse discrimination, and more information was needed on the reportedly disproportionate number of Shona-speaking teachers and supervisors in Matabeleland schools.

6. He inquired into the reasons for the establishment of trust of the kind referred to in paragraph 10 of the report, which conferred benefits in a discriminatory manner, and the circumstances in which they had been and might still be established and made subject to variation by law.

7. The information given in paragraphs 25-27 on the highly sensitive issue of land distribution following independence was most significant, as was the acknowledgement that problems remained. The issue was particularly critical for rural dwellers and in economic terms. The Government of Zimbabwe was to be commended for the measures taken and was requested to keep the Committee informed of developments, especially regarding the resettlement programme initiated in 1980. Additional details were needed on the scope of the 1992 Land Acquisition Act replacing the 1985 Act, as well as on the policy of reconciliation referred to in paragraph 32.

8. With reference to article 3 of the Convention, credit was due to Zimbabwe for the measures to combat racist doctrines and practices, referred to in paragraphs 33-36 of the report, including its participation in international anti-racist organizations and movements. Additional information on specific actions against racism and racial discrimination would be welcome.

9. In their implementation of article 4 of the Convention, States parties were required to take legal measures, irrespective of the extent of the phenomenon of racial discrimination. Compliance with article 4 had a preventive effect, since no country was immune from manifestations of discrimination. The provisions of the Law and Order Maintenance Act (Chap. 65) were not sufficient to ensure full compliance with article 4 of the Convention, particularly the obligations under article 4 (b) concerning racist organizations. Zimbabwe should therefore be requested to consider the possibility of enacting specific legislation to guarantee full compliance with article 4.

10. In connection with article 5 of the Convention, he noted that the judicial system in Zimbabwe enjoyed a deserved reputation for independence. Referring to paragraph 41 (d) of the report, he requested information about the right of indigent accused persons to free legal aid. Further information was needed about the legal provisions governing the Ombudsman's functions and his activities in guaranteeing protection against acts of racial discrimination. The new measures adopted to guarantee the exercise of the right to marriage and the choice of spouse were commendable. He understood that the Marriage Act and the African Marriages Act were two distinct institutions, but it was not clear whether the latter was designed to cover existing customary practice and to protect only marriage between Africans, possibly to the detriment of other ethnic groups. Nor was there any indication of the provisions governing mixed marriages. On the right to inherit and the existence of a dual legal system, referred to in paragraph 55, he wished to know what obstacles stood in the way of harmonization and what system was applied if one of the partners in a mixed marriage died intestate. With regard to freedom of thought, conscience and religion, freedom of opinion and expression and freedom of peaceful assembly and association, some explanation was needed about the scope of possible restrictions by way of parental discipline.

12. Regarding legislative, judicial and administrative remedies, he wished to know whether the remedies available to victims of racial discrimination included applications to the Ombudsman or the Supreme Court for compensation or reparation. The status of the Convention in relation to domestic legislation needed to be clarified.

13. In connection with the implementation of article 7 of the Convention, it was necessary to introduce courses of study concerning racial discrimination, especially in higher education. Public information activities to promote tolerance and understanding and to disseminate the aims and purposes of the Convention were also needed. Referring to the addendum to the report, he commended the new measures to promote greater tolerance and understanding among racial groups in educational establishments. The Government's policy on public information and the media also deserved praise.

14. Finally, he asked that the Committee be provided with the texts of the legal provisions referred to in the report. The Government should also consider the possibility of making the declaration under article 14 of the Convention concerning individual communications.

15. Mrs. SADIQ ALI commended the high literacy rate reported in document CERD/C/226/Add.55 and requested a breakdown of literacy figures at the primary, secondary and university levels.

16. As to the subject of parliamentary elections, she asked how - considering the ruling ZANU-PF party's overwhelming victory at the polls in April 1995, with the sole opposition coming from the ethnically-based ZANU (Ndonga) party, in the eastern districts - the Government intended to implement its policy of racial reconciliation. A May 1995 article in New Africa, claimed that, following the elections, there was a threat of ethnic conflict if discrimination in favour of the ruling Shona majority and against the Ndebele were not corrected. She wondered what improvements had been made in the situation of the Ndebele.

17. In paragraph 56 of the report, concerning the Office of the Ombudsman, it was stated that the defence forces, police and prison service were specifically excluded from being the subject of investigation. She asked how cases involving those services were handled and whether training was given to law enforcement agencies in accordance with the Committee's general recommendation XIII. Human rights groups in Zimbabwe had accused the ruling ZANU-PF party of instigating riots in Harare after a recent peaceful march against police brutality and killings. She asked whether an inquiry had been launched into those killings.

18. In connection with article 5 (e) of the Convention, she requested information on the economic situation, and with reference to the Public Premises (Prevention of Racial Discrimination) Act No. 2 of 1979, which was mentioned in the initial report, she asked whether any damages had been awarded or proprietors' licences cancelled on the grounds of racial discrimination. In the field of education and sport, it was reported that the children of well-off families had access to better schools and clubs, but it was not clear whether talented but poor children benefited from a system of scholarships or other special measures.

18. Zimbabwe was to be congratulated on its land resettlement programme. Further details would be appreciated on the criteria of eligibility for citizenship, referred to in paragraph 50 of the initial report. Additional information was also needed on the implementation of article 7.

19. Mr. WOLFRUM, after praising the structure and presentation of the initial report, said he was glad to note from paragraph 9 that, according to the Constitution, "no law shall make any provision that is discriminatory either of itself or in its effect". The Committee had drafted a general recommendation urging countries to adopt just such a provision. Paragraphs 2 (a) and (b) of the Constitution - also quoted in paragraph 9 of the report - contained a nuanced and ingenious definition of discrimination. He wondered whether the Supreme Court had ruled in favour of any persons whose rights had been violated on racial grounds. If so, examples should have been given.

20. Referring to paragraphs 25-28, he asked for further details on how land redistribution had been achieved. The word "acquire", used in paragraph 31, was ambiguous: it was unclear whether land was bought or expropriated. He also wished to know, in relation to paragraph 29, what the ethnic distribution among farmers was, as between the Shona and other ethnic groups.

21. Too little had been said about education, and the two paragraphs dealing with the subject - paragraphs 3 and 63 - were mutually inconsistent. He was also interested to know how minority languages were supported. Referring to paragraphs 45-48, he asked how the system of political parties worked: what parties existed and by what law they were regulated. The same question applied to trade unions. Lastly, more needed to be said about the Ombudsman, since an ombudsman's functions varied from country to country. He inquired about the Ombundsman's relationship, if any, with the administrative courts.

22. Mr. FERRERO COSTA also praised the report, but felt that more information was required. Zimbabwe's next report should give more details concerning the legal status of institutions and the practical application of laws and standards. He wondered, for example, whether the Supreme Court had dealt with any racial discrimination cases and how international treaties - particularly those relating to human rights and racial discrimination - were incorporated in national legislation. He also wished to know more about the dual legal system mentioned in paragraph 55 and the exact distinction between "customary" and "general" law. With regard to paragraph 59, he requested more information on how applications for redress were submitted to the Supreme Court. He asked how the Court enacted laws on racial discrimination and what "directions" it issued.

23. He was concerned that, according to paragraph 60, there was no single piece of legislation providing protection against racial discrimination in Zimbabwe. Article 4 of the Convention made it clear that such legislation should exist. He also asked for more information on the Ombudsman, including selection procedure, duties and practical record in defending human rights.

24. With regard to education, the admission in paragraph 63 that the educational system did not include a curriculum on racial discrimination was

an honest one, but did nothing to promote the objective enunciated in paragraph 3. Such a curriculum was necessary and he wondered whether the Government had taken any steps to establish one. More information was also needed on the issues covered by article 5 of the Convention.

25. With reference to the addendum to the report, he asked for confirmation that the Broadcasting Act gave a monopoly to the Zimbabwe Broadcasting Corporation. If it did, he wondered who belonged to the Broadcasting Corporation and how freedom of information could be guaranteed. Similarly, in relation to the dissemination of information, he wished to learn more about the programme to restructure the mass media. He wondered whether the Ministry of Information was running the programme itself and what was meant by "the people of Zimbabwe as a whole". More should also be said about the independent press. Lastly, he found strange the requirement under the Education Act, No. 5 of 1987, that "each educational institution should reserve a certain percentage for African pupils"; that sounded like a throwback to colonial times. He also wondered what was the overall position of the minority white and Asian students.

26. Mr. LECHUGA HEVIA noted the requirement in paragraph 3 that 60 per cent of the pupils in every school should be African. He wondered, however, whether private schools still existed and, if so, whether the percentage distribution was the same in such schools. He also wished to know how schools managed to function in deprived rural areas. He pointed out that, through the discriminatory practice of charging high entrance fees, some sports clubs made a mockery of legislation on racial discrimination, and he wondered whether anything was being done to combat such behaviour. In connection with paragraph 40, he asked how the Law and Order Maintenance Act applied to subversive statements made when no witness was present. Lastly, he asked whether there was any legislation against racist propaganda.

27. Mr. de GOUTTES said that paragraph 60 was not in conformity with article 4 of the Convention. Comprehensive statutory protection against racial discrimination was necessary not only for preventive purposes, but also in order to influence attitudes. Criminal law was the expression of the set of values espoused by a society, so that priority should be given to particularly important matters such as racial discrimination. He also noted that no details had been given of the number of complaints - or prosecutions - relating to racial discrimination. It seemed that there was no provision for criminal sanctions in that regard. He wondered what action was taken with regard to perpetrators of racism: whether they appeared before magistrates or went straight to a higher court. More details were also required regarding the Inter-Ministerial Committee on Human Rights, which was mentioned in paragraph 64 of document HRI/CORE/1/Add.55. He wondered whether the Committee either followed up or disseminated the reports mentioned in the paragraph.

28. Mr. SHERIFIS commended the report and expressed appreciation of the fact that Zimbabwe had signed and ratified the Convention. He urged the Government to join the select group of countries that had made a declaration recognizing the competence of the Committee under article 14, paragraph 1 of the Convention.

29. More information on legislative, judicial and administrative remedies should be included in the next report.

30. With regard to paragraph 12 of the report, he welcomed the assurances given by the delegation concerning property rights. However, in terms of civil rights in general, he asked if and how Zimbabwe guaranteed the right of everyone, irrespective of ethnic origin, to take part in the Government, as provided for in article 5 of the Convention, and whether an ethnic balance was required in government, as between President and Vice-President or important ministers.

31. Regarding article 3 of the Convention, he was gratified by Zimbabwe's efforts to promote the elimination of racial discrimination.

32. Mr. GARVALOV said that the initial report of Zimbabwe was a very good one which augured well for future periodic reports. It did not seek to disguise the problems facing Zimbabwe in implementing the Convention. In the area of education, for example, although the authorities were undoubtedly trying to eradicate racial discrimination, the "stipulated 60/40 racial composition" in schools was perhaps having the opposite effect.

33. Paragraphs 22 and 23 were commendably frank about existing problems. However, the Committee would welcome further information on the ethnic composition of the population and whether citizens could take complaints of racial discrimination to the courts in addition to the Labour Relations Department. Similarly, in paragraph 29, the reference to "the establishment of a more balanced racial composition of the large-scale commercial sector" seemed to imply that Zimbabwe was having problems in that sector.

34. The dissemination of information referred to in paragraph 32 was an important issue for a country that was breaking free from a long legacy of colonial domination. However, the Ministry of Information's campaign "to restructure, reorganize and reorientate the mass media" should not jeopardize freedom of speech. The mass media should not be subjected to Government control or censorship but should be free to serve as a corrective force in the quest for democracy.

35. Clarification was needed of the words "a citizen of Zimbabwe, or a permanent resident" in paragraph 45 and "all persons" in paragraph 47.

36. With regard to the right to marriage and choice of spouse, he asked whether inter-ethnic marriages occurred in Zimbabwe and whether young women were sometimes pledged to marry partners not of their choosing. Finally, he asked whether political parties with ethnic or religious affiliations were permitted.

37. Mr. van BOVEN said that the initial report rightly emphasized the difficulties of fully redressing the situation in Zimbabwe after many years of injustice. Land distribution was a key area in that respect, and he asked what was being done to ensure a more equitable distribution.

38. He drew attention to the obligations of States parties under article 4 of the Convention. General recommendation XV could provide guidance when drawing up the relevant national legislation.

39. Article 6 of the Convention referred to the right to seek "just and adequate reparation or satisfaction for any damage suffered" as a result of racial discrimination. The Committee would be grateful for information on compliance with that provision.

40. The delegation and Government of Zimbabwe should do their utmost to disseminate information relating to the work of the Committee and its consideration of the initial report. The Inter-Ministerial Committee on Human Rights could be well placed to carry out such a task and could also facilitate the implementation of the Convention, pursuant to general recommendation XVII. Zimbabwe should also give serious thought to making a declaration under article 14 of the Convention, and to ratifying the amendment to article 8, which would put the Committee's finances on a sounder footing.

41. Mrs. ZOU Deci said that the main task of the Government was to eliminate the vestiges of racial segregation left over from the colonial system which had been characterized by a dual system in various areas, in violation of article 3 of the Convention. Greater efforts were needed, although wiping out the legacy of the former system was easier said than done. Education was a key area in the elimination of racial discrimination and prejudice. It was therefore essential to improve the education offered to the African population and raise their cultural level so that they could overcome their educational and economic disadvantages and compete with Africans, and non-Africans, in other countries. It was to be hoped that the situation described in paragraph 63 of the report would be rectified and that Zimbabwe would ensure full respect for the provisions of article 7 of the Convention.

42. The CHAIRMAN, speaking as a member of the Committee, noted that section 26 of the 1980 Constitution of Zimbabwe preserved certain pre-1980 legislation, which inter alia provided for a separate electoral roll for whites and possibilities of veto. He wondered, therefore, whether section 52 of the 1980 Constitution, which restricted the possibility of legislative amendments to the Constitution, was still in force. He also wondered whether the Committee's scrutiny had encouraged reviews of the compatibility of draft legislation with the Universal Declaration of Human Rights. Referring to paragraph 18 of the report (CERD/C/217/Add.1), he wished to know more about the racial imbalance in private schools and, in particular, whether teachers tried to mitigate its adverse effects.

43. He found paragraph 24 of the report disappointing; he asked whether the International Commission of Jurists was represented in Zimbabwe and whether it and other non-governmental organizations mentioned in the core document could be consulted pursuant to general recommendation XVII. He also supported the request for further information about alleged racially motivated differentiation in land prices.

44. Referring to article 5(e)(i), he wondered whether differences in racial origin, and possible associated differences in wealth, were a barrier to job

opportunities and equality in the professions. With regard to article 6, he asked what remedies were available in cases of day-to-day discrimination in such areas as jobs and housing. According to paragraph 63 of the report, the educational system included no curriculum on racial discrimination "at any level"; he wondered whether that should read "at primary or secondary level" since he understood that there was some teaching on the subject at tertiary level. Lastly, he hoped that the next periodic report would review the problem of inherited discrimination, including the relationship between differences in ethnicity and differences in wealth, the influence of the [illegible] on the country's economy, and the policies pursued to overcome the [illegible] problems.

45. Speaking as Chairman, he invited the delegation of Zimbabwe to attend the Committee's next meeting, and to consider which of the Committee's queries it would reply to then and which would be dealt with in the next periodic report or in a revision of the core document.

46. Mr. Chinamasa, Mr. Jokonya, Mr. Chifamba, Mr. Maunganidze and Ms. Kaseke (Zimbabwe) withdrew.

47. Mr. Ferrero Costa took the Chair.

CONSIDERATION OF A NOTE FROM THE PERMANENT MISSION OF NIGERIA

48. The CHAIRMAN recalled that, following consideration of the thirteenth periodic report of Nigeria (CERD/C/263/Add.3) at the forty-seventh session, the Permanent Mission of Nigeria, in a note dated 4 September 1995, addressed to the Centre for Human Rights, had asserted that Mr. Banton, as country rapporteur, had made inaccurate statements in his presentation, where he had referred to allegations published in The Guardian of 14 June 1995. In the same note, the Committee had been requested to "take steps to correct these serious errors". Mr. Banton had pointed out, in a note in reply dated 17 September 1995, that he had been responding to an important public statement, while in no way making a claim as to its veracity. The question was whether, and in what manner, the Committee should respond.

49. Mr. VALENCIA RODRIGUEZ said that the members of the Committee had all read the note from the Nigerian Permanent Mission, the press article referred to, and Mr. Banton's comprehensive reply. He foresaw no further consequences. The Committee would, of course, continue to make use of press sources, but should treat them with care whenever it appeared that the information might be imprecise.

50. Mr. van BOVEN said that although, in retrospect, he had mixed feelings about the procedure followed by the Committee in considering the report from Nigeria, the country rapporteur had clearly been treated with disrespect by the Nigerian delegation, whose members had even laughed at the reference to Mr. Saro-Wiwa, who had subsequently been executed. Mr. Banton's credibility had been called into question; the tone of the note from the Permanent Mission warranted a response by the Committee as a whole.

51. Mr. CHIGOVERA, supported by Mr. SHERIFIS, Mr. WOLFRUM, Mr. de GOUTTES, Mr. GARVALOV, Ms. SADIQ ALI, Mr. LECHUGA HEVIA and Mr. YUTZIS said that the principle of collective responsibility required that the Committee as a whole should send a reply.

52. The CHAIRMAN suggested that Mr. van Boven, assisted by any other interested members, should draft a reply, to be signed by the three Vice-Chairmen and sent to the Permanent Mission of Nigeria as soon as possible. He took it that, in concluding consideration of the matter, the Committee as a whole wished to record its unreserved support for Mr. Banton.

53 It was so agreed.

The meeting rose at 6 p.m.